

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ERWIN BURLEY,
Plaintiff,

VS.

UNKNOWN DEFENDANTS, *et al*,
Defendants.

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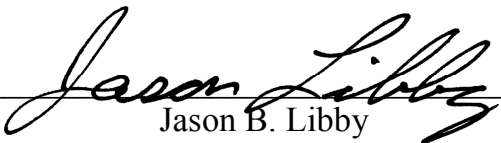
CIVIL ACTION NO. 2:15-CV-143

MEMORANDUM AND RECOMMENDATION

This civil rights action was filed by a Texas state prisoner pursuant to 42 U.S.C. § 1983. On June 19, 2015, the undersigned entered a Memorandum and Recommendation (“M & R”) recommending Plaintiff’s case be dismissed with prejudice for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1) and that the dismissal count as a “strike” for purposes of 28 U.S.C. § 1915(g) against Plaintiff. (D.E. 15). In response, Plaintiff filed objections on July 2, 2015 and the pending Motion to Dismiss on July 6, 2015 seeking to voluntarily dismiss his case. (D.E. 17 and D.E. 18).

It is apparent Plaintiff is attempting to avoid this litigation being counted as a strike pursuant to § 1915(g). However, it is respectfully recommended that the Court consider the previously entered M & R recommending this case be dismissed and count as a strike pursuant to § 1915(g) and Plaintiff’s Motion to Dismiss be **DENIED** as moot.

ORDERED this 14th day of July, 2015.


Jason B. Libby
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(c); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a Magistrate Judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).